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ABSTRACT

Historical perspectives on federal regulations are examined since 1958 along with five dilemmas that cause universities to improve university operations by reforms in current federal regulations. The National Defense Education Act of 1958 and the Higher Education Act (NDEA) of 1965 are often identified as two of the major milestones in the development of federal involvement in contemporary higher education. The NDEA moved to guarantee opportunity for higher education to greater numbers of young people and increased the size and scope of the federal government's role in supplementing the states in the field of higher education. The 1965 Act provided educational opportunity grants and solidified the federal role in higher education. Despite the fact that universities must comply with federal regulations and bear the cost of operating a student financial aid office, the universities largely follow that course because of the dramatic need for student financial aid. Additionally, the shortage of funds for innovation in teaching and curriculum development has prompted universities to apply for federal funds, despite costs to prepare and administer grants. Doctoral institutions require research funds, and institutions generally need funding of special projects (e.g., public television stations). Finally, a question at issue is how often a university should challenge federal regulations that it feels are unduly restrictive. It is suggested that universities need to propose a plan to the Reagan Administration that would restore autonomy to the campus. (SW)

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FEDERAL REGULATIONS: PERSPECTIVE FROM THE UNIVERSITY LEVEL

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In the minds of many university officials the greatest problem confronting the campus today is one of overregulation. It is relatively easy to develop a case against federal regulations to say nothing of regulations that are imposed upon universities at the state level. In 1978 Peter Magrath, President of the University of Minnesota, testified before a subcommittee of the House Education and Labor Committee that his university had spent a minimum of $1 million per year complying with federal and state health, social, and safety regulations. He continued, "The combined effects of state and federal accountability measures for postsecondary education have become uncoordinated, excessively elaborate, duplicative, costly, and, in some cases, probably ineffective and counterproductive."

Most presidents would agree with the conditions described by President Magrath. There is little reason to doubt that the growth of federal regulations affecting higher education has caused an increase in costs by requiring the employment of additional personnel, purchase of special equipment and computer software, and the use of increased space for preparing federal reports. In fairness, however, it is necessary to point out that the benefits to the university from federal support are so substantial that most universities are willing to endure the costs, inconvenience, and occasional irritation from federal regulations. Obviously, most campuses have derived enough benefits from federal assistance that they are willing to tolerate federal regulations related to social and organizational change.

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The approach taken in this paper will describe briefly the evolution that has occurred in federal regulations since the passage of the National Defense Education Act of 1958, examine five dilemmas that cause universities to accept federal regulations, and suggest some possible ways to improve university operations by some reforms in current federal regulations.

Analysts of higher education tend to identify the National Defense Education Act of 1958 and the Higher Education Act of 1965 as two of the major milestones in the development of federal involvement in contemporary higher education. At the heart of NDEA was the revelation that federal interest was moving in the direction of guaranteeing opportunity for higher education to greater numbers of young men and women. In the minds of many people the Act represents a quantum leap in the acceptable size and scope of the federal government's role in supplementing the states in the field of higher education. Federal aid programs that have been designed by President John F. Kennedy in 1963 and '64 were repackaged in the Higher Education Act of 1965 as enacted by the Lyndon Johnson Administration. The Johnson proposal consists of eight titles authorizing a total of $840 million. The best known part of this legislation is the "educational opportunity grants" available to students of "exceptional financial need." The comprehensive Higher Education Enactments of 1972 solidified the federal role in higher education. From the early '60s, beginning with the Equal Pay Act of 1963 and concluding with the Rehabilitation Act of 1973, higher education experienced the rapid growth of federal regulations.

Carol Van Alstyne and Sharon Coldren estimate that the costs of compliance with federally mandated programs in 1976 ranged from one percent to four percent of the total operating budgets in higher education institutions. (See The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities--Special Report, Washington, D.C., American Council on Education, 1976, page 14.)

Some of the best known examples of direct regulation include the Equal Employment Opportunity Act (Title VII), Affirmative Action (Executive Order 11246 and Executive Order 11375), the Age Discrimination Act of 1975, and Title IX of the Education Amendments Act of 1972.

It is well known that people enjoy money and dislike regulations. Universities are no different. Anyone familiar with universities, of course, realizes that they are complex, diversified, and unique organizations. Historically, public and private universities have considered themselves underfunded. During periods of high inflation and increasing student enrollments, campuses found themselves in need of money for research, overhead costs, and construction moneys. During the period of the late '60s and early '70s, universities also found themselves confronting militancy on the campuses which frequently led to court battles on issues ranging from freedom of speech to housing regulations. The demands for changes in administrative policy soon spread from students to faculty and staff members. The advent of federal regulations meant the traditional ways of handling employees, whether faculty or staff, would undergo a dramatic change. Much of that change would take the form of a seemingly endless collection of data and the establishment of special offices to deal with affirmative action.

From the university level there are at least five dilemmas which help explain why administrators choose to cope with federal regulation rather than shun all federal assistance and remain independent. The second part of this review, then, proposes to examine each of the dilemmas briefly.

First, the double-barreled problem of rapid increases in inflation, combined with an inability to attract sufficient private scholarship funds, has forced universities into the position of having to choose between the dramatic need for student financial aid versus the cost of staffing of a financial aid office and filing periodic reports as required under the aegis

of federal financial assistance. Recently, along with twenty other presidents, I had an opportunity to present testimony to the House Postsecondary Subcommittee on Education. During a three-hour session I listened to a unanimous report from the presidents, indicating that any reductions in federal aid programs for students beyond the cuts that have already been made will lead to serious consequences by denying hundreds of people access to higher education and produce a substantial loss of revenue for colleges and universities. The aid programs since 1965 have created a clear expectation on the part of most students that financial assistance is available for the asking. Despite the requirements that may be implemented by the government or the cost of operating a student financial aid office, the university simply must offer financial aid and then grin and bear the consequences.

Higher education has a history of evolving from institutions with limited course offerings to ones with a great variety of academic programs. The shortage of funds for innovation in teaching and curriculum development has forced universities to consider the dilemma of receiving funds from various federal agencies which emphasize innovation in teaching versus the cost of personnel to prepare and administer the grants. The demand for increased faculty salaries and the reluctance of legislatures to appropriate funds for improving the quality of instruction have left an administrator with few choices for finding new funds. The limited number of private foundations willing to support public institutions has made the problem even more acute on those campuses.

A third area that is felt most acutely at institutions offering doctoral degrees is the demand for research funds. The most productive researchers among the faculty expect released time and proper equipment for conducting research. Again the university is confronted with the dilemma of using funds from the National Science Foundation and other federal agencies to enhance faculty performance versus the loss of autonomy and the acceptance of increased control over the kinds of research projects that are eligible for funding and the control

of research procedures. In a few states there have been efforts to establish major research facilities in conjunction with major corporations. Although this approach offers some alternative to total dependence on federal research funds, few universities have been able to free themselves from the reliance upon federal funding for most of their research programs.

The first three dilemmas are related to traditional activities in the university setting. The fourth dilemma is one that universities confront because of their need for funding of special projects. These projects range from a desire to develop a public radio or television station or a museum or some other related activity versus the cost of entering an activity that is highly controlled by a federal agency. Because of the potential long-range benefits to the university, there is a willingness to act in concert with federal priorities.

The final area that creates a dilemma for a university involves funding only indirectly. In the area of direct regulation of university personnel policies is the problem of how administrators will challenge federal regulations. The dilemma is related to the question regarding how often should a university challenge federal regulations which it feels unduly interfere with the ability of a university to make policy and function as an academic institution rather than as a subject of social change. Title IX as it applies to women's intercollegiate athletics, for example, created numerous issues for institutions with major investments in men's intercollegiate athletics. Until a system of mutual accommodation could be established on most campuses, Title IX caused considerable consternation and generated both fiscal and management problems. Until the regulations had been tested in the courts, many universities did not know whether they should accept a noncompliance report from a federal agency or challenge the findings as representing an inaccurate interpretation of the statutes, an unjust interpretation of the university's practices, or some related challenge to the enforcing agency's authority to punish. Universities

soon found that if they challenged an agency's findings, the consequences were often months of hearings or judicial procedures and the loss of thousands of dollars in staff time to assemble evidence for refuting the charges. In the late '60s and early '70s the legal staff for major universities was the fastest growing unit.

In the last decade numerous presidents have concluded, after months of trying to comply with all the federal regulations, that universities are impossible to manage. It might be more accurate to say that they can be managed, but they are impossible to lead. Instead of encouraging the faculty to embark on a bold voyage involving quality instruction and outstanding research, a president today is in the role of helping vice presidents, deans, and department heads avoid lawsuits and federal compliance reviews by steering the university through rocky waters. Administrators who had felt since their earliest graduate days that academic competence should be the ultimate determinate in making faculty appointments discovered that that form of academic freedom was gone. Federal judges and compliance officers were now the people assigned the role of judging which faculty members were competent.

If this is an accurate description of recent years, how can universities deal with future problems and their relationship with federal agencies? President Ronald Reagan and Secretary of Education Terrel Bell have indicated their willingness to reduce the number of federal regulations affecting higher education. Probably the most positive thing that can be said regarding the Reagan Administration's performance is its success in avoiding the issuance of additional regulations. If universities could demonstrate their ability to engage in self-regulation and also propose a plan to the Administration that would restore autonomy to the campus, it might be possible to reverse some of the practices that have led to overregulation and intervention in campus policies. In February, 1981, the American Council on Education issued a Statement

on Federal Regulatory Reform. The report acknowledges that some existing regulations cannot be avoided. It recommends that further expansion of the government's regulatory powers and activities should be the exception rather than the rule. Finally, the report urges that existing regulations be re-examined with the hope of eliminating or reducing the scope and cost of the most burdensome ones. (Pages 9-10.) The report makes a pointed argument that freedom of action and self-determination in institutions should not be undermined unless a considered judgment is reached that there is a compelling economic and social need. (Page 10.)

My own experience would dictate the addition of one other consideration. If it becomes necessary to conduct a compliance review on campus, the representatives from the federal agency should be highly trained and experienced professionals rather than beginning investigators with limited understanding of university operations. Every effort should be made to settle any disagreements through informal proceedings prior to the issuance of public findings or judicial proceedings on the part of either party. All the problems have not disappeared, but I must say in recognition of the Reagan Administration's efforts, I have found that federal regulatory agencies seem to have an increased interest in settling disputes informally and not becoming a burden for administrators. A perspective from the university level, then, is, "There is still hope."